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6 IN THE UNITED STATES DISTRICT COURT
7
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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10 ORACLE AMERICA, INC.,

No. C 10-03561 WHA

11 Plaintiff,

12 v.

13 GOOGLE INC.,

14 Defendant.

15 **PROPOSED INSTRUCTIONS
RE FACTOIDS FROM COURT
OF APPEALS OPINION**

16 Google raises the point that if we hold it to the Federal Circuit's findings on commercial
17 use, statements that help Google should also be included in the instructions to the jury. The
18 Court asked the parties to meet and confer on this issue, but counsel have failed the Court.

19 The Court proposes to advise the jury that "Google admittedly copied portions of the
20 API packages and did so for what were commercial purposes," deleting the word "purely" as
21 argumentative. *Oracle America, Inc. v. Google Inc.*, 750 F.3d 1339, 1376 (Fed. Cir. 2014).

22 For even-handedness, the Court also proposes to instruct the jury that "Oracle concedes
23 that Google and others could employ the Java language — much like anyone could employ the
24 English language to write a paragraph without violating the copyrights of other English
25 language writers. And, that Google may employ the 'package-class-method' structure much
26 like authors can employ the same rules of grammar chosen by other authors without fear of
27 infringement." *Id.* at 1368.

28 The foregoing would provide each side with one cogent, relevant statement from the
court of appeals opinion.

The Court further asks counsel to agree that the following statements from the opinion may be provided to the jury as established facts in the case:

- “Although Android uses the Java programming language, it is undisputed that Android is not generally Java compatible.” *Id.* at 1351.
- “Oracle licensed Java ME for use on feature phones and smartphones. Sun/Oracle has never successfully developed its own smartphone platform using Java.” *Id.* at 1350.

7 The general principle is that if any statement made by the court of appeals is to be
8 deemed established in our trial, then we must be even-handed and give both sides the benefit of
9 favorable points in the same opinion. Of course, counsel may agree on any set of points within
10 the opinion as they wish.

11 By **TUESDAY, APRIL 26 AT NOON**, counsel will please stipulate to the above or explain
12 why the above proposals should not be adopted. Absent agreement (to achieve even-
13 handedness), none of the statements will be deemed admitted without prejudice to the
14 possibility that briefs and/or oral argument will be admitted without prejudice to proof.

IT IS SO ORDERED.

Dated: April 21, 2016.

Wm. Alsup
WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE